

SPECIAL COUNCIL MEETING

AUGUST 20, 2014

The Special Council Meeting of the Council of the County of Kaua'i was called to order by Council Chair Jay Furfaro at the Council Chambers, 4396 Rice Street, Suite 201, Līhu'e, Kaua'i, on Wednesday, August 20, 2014 at 8:38 a.m., after which the following members answered the call of the roll:

Honorable Tim Bynum
Honorable Mason K. Chock, Sr.
Honorable Gary L. Hooser
Honorable Ross Kagawa
Honorable JoAnn A. Yukimura
Honorable Jay Furfaro

Excused: Honorable Mel Rapozo

Chair Furfaro: Aloha and good morning everyone.

APPROVAL OF AGENDA.

Mr. Kagawa moved for approval of the agenda as circulated, seconded by Mr. Chock, and carried by a vote of 6:0:1 (*Mr. Rapozo was excused*).

PUBLIC COMMENT.

Pursuant to Council Rule 13(e), members of the public shall be allowed a total of eighteen (18) minutes on a first come, first served basis to speak on any agenda item. Each speaker shall be limited to three (3) minutes at the discretion of the Chair to discuss the agenda item and shall not be allowed additional time to speak during the meeting. This rule is designed to accommodate those who cannot be present throughout the meeting to speak when the agenda items are heard. After the conclusion of the eighteen (18) minutes, other members of the public shall be allowed to speak pursuant to Council Rule 12(e).

Chair Furfaro: For a period of public comment, I do not see anyone in the audience this morning at 8:30 a.m. for this one (1) item, so we will go right to the County Attorney.

There being no one to give public comment, the meeting proceeded as follows:

EXECUTIVE SESSION:

ES-752 Pursuant to Hawai'i Revised Statutes (HRS) Sections 92-4, 92-5(a)(4), and Kaua'i County Charter Section 3.07(E), the purpose of this Executive Session is to provide the Council with a briefing and request for authority to settle the case of Lynell Tokuda et al v. County of Kaua'i, et al., Civil No. CV13-00202 DKW BMK (U.S. District Court), and related matters. The briefing and consultation involves consideration of the powers, duties, privileges, immunities, and/or liabilities of the Council and the County as they relate to this agenda item.

Chair Furfaro:

Okay, thank you.

Mr. Bynum moved to convene in Executive Session for ES-752, seconded by Mr. Kagawa.

Chair Furfaro: I think we can move to go into Executive Session by a motion the Mr. Bynum is proposing. Discussion? Yes, discussion?

Mr. Hooser: Yes, I have discussion, Chair. Good morning everyone. It is kind of a quiet start to our meeting it seems like. I have mentioned this on earlier Executive Sessions. I think it behooves us to explain a little bit more for the public's benefit what we are doing. The public often just gets titles of Executive Session and they have no idea so we are going to be going into Executive Session to discuss a settlement. I would like the County Attorney to discuss the allegations; who is suing who, why we are being sued, why we are going into the room and as much. I understand there are some reasons we would not give up our strategy for settling but I think a description of the circumstances and the reasons we are going in is appropriate. Thank you.

Chair Furfaro: I do want to let you know that I have a draft of a request that asked the County Attorney, going forward, if they could advise us on how they can expand without breaching any confidentiality. I have no response to that question at this point but I am open if you can expand on the question from Mr. Hooser and if you can wait for the correspondence from me going forward it would be appreciated this morning.

There being no objections, the rules were suspended.

MAUNA KEA TRASK, First Deputy County Attorney: Good morning. For the record, First Deputy County Attorney Mauna Kea Trask. I will be able to share with you the facts as stated in the various pleadings which are public documents and that is what I am going to restrict myself to this morning. As far as the facts of this case on or about February 15, 2012 members of the Kaua'i Police Department (KPD) including Sergeant Christopher Calio, Henry Barriga, and Sherwin Perez participated in a Hawai'i Fugitive Taskforce operation to apprehend Richard Louis, a convicted felon with an outstanding warrant for firearms violations, ammunitions, drugs, and theft. Hawai'i Fugitive Taskforce is a cross agency taskforce comprised of police personnel from all of the counties, state sheriffs as well as federal law enforcement authorities and they came to Kaua'i to

execute and outstanding warrants. In this case, again on that date, there was a warrant for Richard "Dickie" Louis. They went to go execute it, the warrant. Mr. Louis barricaded himself in his house. They were able to negotiate the release of one (1) of the occupants of the house and upon...this was later in the afternoon, upon evening passing the officers around the perimeter of the house observed Mr. Louis exit the house and climb on top of the roof. He began yelling at officers on the scene, throwing items that were on his roof, various types of building materials at the officers, making threats to them. Officer Calio perused him, per the parameters of the arrest warrant, and walked on top of the roof to apprehend Mr. Louis. Mr. Louis turned around, picked up a hammer that was located on top of the roof and a paint can filled with nails, and threw it and came towards Officer Calio in a threatening manner threw the hammer at him and at which time Officer Calio after telling Mr. Louis numerous times to stop...

Chair Furfaro: Excuse me, point of order. I want to make certain you are comfortable with the amount of details that you are sharing with us and Councilmember Yukimura has a question on your narrative thus far. Councilmember Yukimura, you have the floor.

Ms. Yukimura: Thank you, Chair. Mauna Kea, these are allegations in the complaint, right?

Mr. Trask: Actually, we have motions for summary judgment filed so these facts are stated in said motions.

Ms. Yukimura: Okay, so those are the facts which the parties have agreed to?

Mr. Trask: No. There is not agreed upon facts in this case but these are the facts as I understand them.

Ms. Yukimura: Okay, well they are the facts as you understand them but they could be disputed so I appreciate, I actually share Councilmember Hooser's need for more details but I do not know if we need such level of details especially when they may be at some point if the summary judgment fails then...

Mr. Trask: Well the fact is...that is the thing, if the facts are in dispute in which...and in all cases kind of the facts are in dispute so I am not sure how then respond to the question.

Chair Furfaro: Okay and perhaps you should understand and wait until you get my written request which basically says, "I would like and evaluation as posed by Mr. Hooser's question last week, as to what can be expanded on for the public's benefit of what information and the rational for going into Executive Session can be shared." I think that is the question.

Mr. Trask: I understand. I will wait for the written request and maybe we will be able to discuss it further in Executive Session because it is always a balance and as an advocate for the County in this situation you are going to put forth your case so it is one of those it is a balancing test you have to understand I will always endeavor to answer the questions that you want answered but there is always a level of degree of comfort.

Chair Furfaro: Okay, JoAnn, I am going to let Mr. Hooser have the floor now and then I will do a follow-up with you.

Ms. Yukimura: That is fine.

Chair Furfaro: Mr. Hooser.

Mr. Hooser: Yes, thank you for giving us the overview. I think again it is important for the public to know what we are doing, the basis, the fundamental reasons we are going into Executive Session. It is my understanding from listening to your presentation that is likely a mixture of plaintiff's allegations and a County's position. The dealing with stuff like the hammer, I do not know if that is in dispute or not, whether there was a hammer, whether there was not a hammer, but there are different perspectives to the whole thing and so I understand the difficulty of telling the story. I think it is in light of what is going on in the world I think it is important to know that stuff like that goes on here too. There was a person that was killed during a police action and it is a serious thing. I think people need to know that. Whether not to pass judgment on anyone who is right and who is wrong but I think that is important. In the context of the matters involving Kaua'i Police Department, specific question, during this time it is my understanding, this was the same time when the Police Chief and those two (2) Deputies were on leave or there was a dispute between the Mayor's Office and the Police Department that relates to the other issues that were before us, the EEOC issues. Was the Police Chief in charge at this time?

Mr. Trask: I think I really hate to sound like a lawyer sometimes so I would rather discuss this and maybe can be more clear and then once you have your answer, we can ask further questions but you have to appreciate that KPD chain of command structure.

Mr. Hooser: I cannot hear you. Can you speak a little bit louder?

Mr. Trask: It is a difficult question to answer because you really have to appreciate the KPD incident command structure and how it relates to everyday operations so when you have real high level brass...first off KPD structure accommodates and contemplates when the Chief or the Deputy Chief are not present. Whether it be for travel, training, personnel matters, whatever it is. So, essentially the machine keeps going. And of course we all know that the Chief does not participate in every single operation, everyday, all of the time. It is impossible.

Chair Furfaro: You know I am going to stop you at that point. There is available to all of us information that deals with the command structure within the police department, it is organization, its sub-departments and in fact the presence of a supervising officer and so forth can be used either way in defense or a challenge to this case and I would rather hear those answers in Executive Session.

Mr. Trask: I think that is a wise decision.

Chair Furfaro: I would encourage you to be as complete as you can when you read my written correspondence to you and the questions because I think the Councilmembers do have a very interesting question for the purpose of public information and I would like as many of those pieces answered if possible. Okay? JoAnn.

Ms. Yukimura: Thank you. Not having...I do not think I have seen your memo. I just want to say that for me, I think it is important for the public to know the basic facts of the case but not in such detail because I think those are going to be litigated or could be. I think there are probably many things to learn from this case in terms of future process and police response and all kinds of things but my feeling is, it is probably good to have once the case is complete, a really do an analysis of what we can and should learn from it and proceed to implement any changes that we learn about but I think to go into too much detail before the case is litigated makes me a little uncomfortable.

Mr. Trask: I think that is a good concern. I just would like to state though, that I really would appreciate talking to you all in this in Executive Session because it is difficult, and there are parameters that you have to balance out here. I really do not want any statements to be made or interpreted to mean that there has been a determination of wrong or there even is an ability to determine that any wrong was done here, or that there is a deficiency in the structure or anything that day because again like Councilmember Yukimura said, that is what the whole fact finding court process is about, without skewing it either way. Of course I am going to say what I believe, but it is a touchy situation.

Chair Furfaro: I would like you to take your lead from what I explained earlier. I have not circulated my correspondence to any Councilmembers here but I do plan to when I get the response. Mr. Bynum.

Mr. Bynum: I do not have any questions just when we call the meeting back to order, I would like to make a comment before we take the vote.

Chair Furfaro: Okay, Mauna Kea, I am going to call us back to order.

The meeting was called back to order, and proceeded as follows:

Chair Furfaro: Let us recognize Mr. Bynum who wanted to make a comment.

Mr. Bynum: I want to thank Councilmember Hooser and the Chair for the intention to give the information we can publicly and just for my own two (2) cents and because a lot of these cases are interrelated and they are part of a web that the public can understand but I thought that kind of the...my expectation is that headline would be this is related to an incident that occurred on this date, that was in the press. Here are the public documents that are available through the courts, as you have mentioned, the pleadings, and as Mauna Kea has mentioned the pleadings and so the public can dig deeper if they want into what is public record and kind of have that be the headline and then what the specific thing we are being asked, some explanation. You know, this is about settlement or this is just a briefing...so those are just my two (2) cents but I think for the public to have a better understanding and then there may be other incidences that these cases bring up policy issues and what is available in the public we can discuss on the Council in other forms. I appreciate that certain level of detail we should save for in there. Thank you for this dialogue, I think it is helpful to us in moving us in a good direction.

Mr. Trask: And I would like to state for the record, I do not think that the relevant facts in this case are related to anything else. I think the relevant facts are independent but the County is always, I mean it is a multi-agency, multi-facet entity so things happen, while other things happen but I do not necessarily think that correlation has anything to do with causation in this matter. I just want to clarify that for the record. Thank you.

Chair Furfaro: Thank you and thank you, Mr. Hooser. When I get those responses, I will be sharing them with the full Council.

Mr. Hooser: I appreciate the response from the County Attorney's Office and I think that it has actually been bugging me for a long time. We get so many of these complaints and lawsuits and we go into Executive Session but provide little information to the public. I think we need to...this is a...this particular example you know, a person died and the County is being sued and we are discussing a settlement or possible settlement and have to decide whether to fight or how to fight or how much...but there are many, many others that get presented to us under just a case number or a case name and the public has no idea unless they are really, really paying attention to the details. They have no idea why we are going in there and my particular concern I think echoes...I mean that is one (1) particular concern but the other echoes a little bit as to what Councilmember Bynum, I believe was implying or referring to that there are certain Departments, certain Agencies in this case the Kaua'i Police Department we are having a number of issues come before us and so I think that is important to get out there on the table. I realize we are hamstrung by our confidentiality, legal exposure, and financial exposure for the County, but some of these issues require action by this Council and the Administration and we have to figure out a way to take that action. What if we wait until these court cases are concluded, it could be a year or it could be two (2) years and so that is the challenge I think we face is how do we deal with these issues that point in some case in my opinion to systemic problems within leadership in various areas of the County? It behooves us to seek that answer and I

think it starts with a little greater disclosure as we go into Executive Session in these matters so thank you very much for perusing it. I appreciate that.

Chair Furfaro: And hopefully the County Attorney's office can give that some urgency in their response. Thank you. Did I have a motion made to go into Executive Session? I would like to ask if there is no further discussion if I could have a roll call vote to go into Executive Session.

The motion to convene in Executive Session for ES-752 was then put, and carried by the following vote:

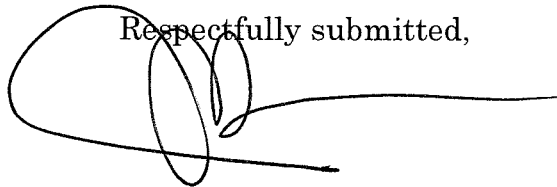
FOR EXECUTIVE SESSION:	Bynum, Chock, Hooser, Kagawa, Yukimura, Furfaro	TOTAL – 6,
AGAINST EXECUTIVE SESSION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Rapozo	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Chair Furfaro: Thank you very much. BC, we will be going into Executive Session for this briefing. Thank you.

ADJOURNMENT:

There being no further business, the Special Council Meeting adjourned at 8:58 a.m.

Respectfully submitted,



JADE K. FOUNTAIN-TANIGAWA
Deputy County Clerk

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